

ESTABLISHMENT OF THE JUDICIAL MEDIA COUNCIL OF MACEDONIA AS A TOOL FOR ENHANCING JUDICIAL TRANSPARENCY AND A REVIEW OF THE FORMALISATION OF COOPERATION BETWEEN JUDGES AND JOURNALISTS

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1. INTRODUCTION

On 21 September 2018 in the Hotel Aleksandar Palace in Skopje, under heavy media coverage, Justice Djemali Saiti, PhD, unveiled to the public a newly established institution – the Judicial Media Council of Macedonia. The Council is a unique institution within the Macedonian Judges Association which brings together judges (presidents of courts) and journalists to discuss issues of mutual importance and to further strengthen judicial transparency and access to information on cases by the media. Furthermore, the Council represents a platform for discussion of and decision making on issues of mutual interest between judges and journalists, which until recently was only an abstract notion as the courts did not disclose any information to the public, and neither were journalists allowed to follow full trial proceedings as representatives of the public.

The Council is the final result of the two-year project “Strengthening the Role and Independence of Judges in Republic of Macedonia – Enhanced Judiciary”, implemented by the Macedonian Judges Association with the support and cooperation of the Embassy of the United States of America in Macedonia.

This review is structured according to the importance and complexity of the legal aspects of this Council: 1. Introduction; 2. Formalising Judicial-Media Cooperation; 3. The Legal Basis for Establishing the Judicial Media Council; 4. Positive Practices of Judicial-Media Commissions 5. The Name, Nature and Composition of the Judicial Media Council; 6. Educational Activities, Decision Making and Financing; and 7. Conclusion.

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2. FORMALISING JUDICIAL-MEDIA COOPERATION

The judiciary is one of the three governing powers, which has a function that extends beyond the traditional role of "unbiased third party" in resolving social issues. Judicial intervention in the political system can be profound, influential and very sophisticated, which additionally represents the relationship between the state and citizens, as well as relations between various social actors. The transparency of the judiciary has great importance for and influence on the development of public policy, as well as in the recognition and protection of the rights and control of other authorities.

In this context, given the importance of the reform of the Macedonian judiciary in institutional frameworks, transparency and access to justice and information reforms are relevant because of their potential impact on the functioning and operation of the judicial authorities themselves. In other words, the adoption of transparency reforms by judges and other legal practitioners could have a positive effect on their institutional capacity, as well as on increasing their legitimacy and authority vis-à-vis the other two authorities and relations with citizens.

The Macedonian Judges Association, with the cooperation and support of the Embassy of the United States of America in the Republic of Macedonia in the project "Strengthening the Role and Independence of Judges in the Republic of Macedonia", has organised regional workshops on the issue of access to justice and transparency of the judiciary and the media as a prerequisite for strengthening judicial independence and transparency. The aim of these regional workshops was to enable discussion among judges, legal practitioners, experts and the media in order to draw mutually acceptable conclusions and make recommendations for reforming mechanisms for transparency of the courts, strengthening the connection between the media and the courts, as well as familiarising the general public with the current state of penal policy in the Republic of Macedonia. These workshops were aimed at formulating and recognising basic assumptions for the establishment of a judicial media body and a set of rules and principles for the functioning of the body as a way of formalising cooperation between judges and journalists beyond the transparency provisions envisaged in the Law on Judges and the Law on Criminal Procedure related to the presence of the public and media in court trials.

3. LEGAL BASIS FOR ESTABLISHING THE JUDICIAL MEDIA COUNCIL

The legal grounds of the formation of this Council were presented in the Analysis on the Legal Framework and Practice for Promoting and Formalizing Judicial-Media Cooperation,³¹⁰ which presents in detail the general trend of the increased media attention directed at the judiciary, especially in the field of criminal law, in high-profile cases of former public officials accused of serious crime.

Having in mind the links that can be created between judges and the media, there is a danger that the behaviour of judges will be influenced by journalists. The international documents on the independence, efficiency, transparency and accountability of judges, and in particular the opinions of the Consultative Council of European Judges (hereinafter: CCJE) indicate that freedom of the press is an important principle where judicial proceedings must be protected against inappropriate external influence, judges should demonstrate caution in their relations with the press and be able to preserve their independence and impartiality by refraining from any exploitation in their relations with journalists, and from any unjustified comments on the cases they lead.³¹¹

For the purposes of the formalisation of judicial-media cooperation, the analysis refers to the opinions of the CCJE: Opinion nos. 3, 7, CCJE Recommendation no. 12 and the Bordeaux Declaration on the Relations of Judges and Prosecutors in a Democratic Society, which, in terms of advancing the relationship between judges and journalists, clearly point to the establishment of independent bodies to formalise cooperation between stakeholders in order to avoid sensationalism in reporting, media pressure and judicial non-transparency.³¹²

The provisions of Opinion no. 3 of the CCJE, under heading b entitled "Impartiality and out-of-court conduct of judges" under paragraph 29 refers to the establishment, within the framework of the Supreme Courts or Judges Associations, of one or more bodies or persons with an advisory role that would be available to judges whenever there is uncertainty whether a particular activity in the private sphere is compatible with their status of judge.³¹³ The Opinion suggests that judges are encouraged within

³¹⁰ A. Bozhinovski, Analysis on the Legal Framework and Practice for Promoting and Formalizing Judicial Media Cooperation, *Macedonian Judges Association Publication*, Skopje 2018.

³¹¹ Opinion no. 3, CCJE, available at: <https://www.coe.int/en/web/ccje>

³¹² Conclusions of the 5th Meeting of the Presidents of European Supreme Courts, Ljubljana, 6-8 October 1999, paragraph 1.

³¹³ Conclusions of the 5th Meeting of the Presidents of European Supreme Courts, Ljubljana, 6-8 October 1999, paragraph 4, where it is also made clear that a spokesperson should not give a personal opinion on a decision already delivered or a case still pending.

these bodies to discuss problems of disclosing information about cases on request by journalists.

The provisions of Opinion no. 7 of the CCJE in relation to "Justice and Society" is more precise than the previous Opinion, where in section C it is indisputably stated that judges pronounce themselves in public above all through their decisions. However, having in mind the principle of transparency and Article 10 ECHR, it is the right of the public to be informed, and, given the development of social media, it is necessary for judges to improve their relations with media representatives and to act upon requests for information of a public character, without harming the interests of justice in the particular case. In this Opinion, it is further stipulated that the promotion of relations with the media should be conducted in two ways. The first is by adopting a common code of judicial-media ethics in which judges will define the rules whereby statements of a particular case can be made by law, and journalists will envisage rules and principles for further clarification and detailed disclosure of cases to the public without jeopardising the interests of justice.

In point 40 of Opinion no. 7, it is stipulated that it is necessary to establish an effective mechanism, in the form of an independent body, whereby journalists and judges could discuss common problems and practical challenges.³¹⁴

Furthermore, paragraph 42 of Opinion no. 7 refers to the necessity of organising schools for journalists and judges for the purpose of the professions becoming mutually acquainted. Opinion no. 12 of the CCJE and the Bordeaux Declaration in section 5, paragraph 11, point to the preparation of a set of rules and principles within an independent body to regulate the relations between judges and the media. This indicates that a judge always expresses himself or herself through the judgment he or she makes, but it is suggested that judges should be in constant contact with journalists and should give an explanation of each case individually without disturbing the interests of criminal justice, in order for the wider public to be informed about the particular case of public interest.

On the other hand, the right of the public to be informed is a basic principle arising from Article 10 of the European Convention on Human Rights, where it is conveyed that the judge is responsible for the legitimate expectations of citizens for transparency in proceedings prescribed by law. On this basis, judges are free to prepare a summary or report in which the public will be able to understand the legitimate content and significance of the judgment delivered. The practice of

³¹⁴ Conclusions of the Meeting of the Presidents of the Associations of Judges on "Justice and Society", Vilnius, 13-14 December 1999, paragraph 1.

selecting a judge with responsibility for communicating with the public, or, in other words, the media, in accordance with the recommendations of Opinions 1, 3, 7 and 12 of the Consultative Council of European Judges, should continue to be promoted in order to adequately inform the expert and general public about topics of public interest without fear of media pressure. Regarding this rule, advisory opinions point to the development of common codes of ethics for judges and journalists and the promotion of a form of cooperation.

In Opinion no. 12 of the CCJE, this issue is regulated in more detail, indicating that the principle of transparency of the judiciary must be supplemented with appropriate forms of cooperation and continuous education of judges and journalists. Moreover, in section 5 of that Opinion, it is pointed out that the media play an essential role in a democratic society in general and more specifically with regard to the judicial system.³¹⁵ The perception in society of the quality of justice is strongly influenced by media reports on how the justice system works. Publicity also contributes to achieving a fair trial, as it protects the parties and defendants from the non-transparent administration of justice, that is, the phenomenon of shady trials.³¹⁶ The opinion focuses further on the increased attention of the public and the media on criminal proceedings, which additionally generates an increased need for objective information from the media, the availability of information and a permanent relationship between the court and journalists regarding the impartial coverage of all aspects of the case.

In general, the opinions of the CCJE affirm the principle of the rule of law and confirm that in a democratic society it is essential that the courts inspire confidence in the public. Indeed, the public character of proceedings is one of the essential means through which trust can be maintained in the courts. Two major documents on the issue are being examined within the Council of Europe: a) Recommendation Rec (2003) 13 on the provision of information through the media in relation to criminal proceedings; and b) Opinion no. 7 of the CCJE for Justice and Society (2005). These documents generally address the right of the public to receive information of general interest, as well as the need of journalists to access the necessary information in order to be able to report and comment on the functioning of the justice system, in accordance with the obligations of independence, impartiality and the discretion of

³¹⁵ European Court of Human Rights, *Sunday Times vs. United Kingdom*, judgment of 26 April 1979, Series A, No. 30 where the notions mentioned in the text are said to be included in the phrase "authority of the judiciary" contained in Art. 10 ECHR.

³¹⁶ A phenomenon in American law practice. More in: *Elijah Hawthorne*, *Transparency of the Judiciary as a Cornerstone for a Democratic Society and Rule of Law*, Oxford University Press (2012).

judges for cases of high interest, as well as the restrictions laid down by national laws and in accordance with the Court's case law.

Opinion no.12 of the CCJE, in paragraph 73, refers to standards that oblige the media, as well as judges, to observe fundamental principles such as the presumption of innocence and the right to a fair trial, and the right to private life of the persons concerned, to avoid violating the principle and the appearance of impartiality of judges and public prosecutors involved in the case. In other words, reporting must be impartial without any sensationalism.³¹⁷ Specifically, the opinions in paragraph 73 indicate that the media coverage of cases under investigation or trial may become invasive and cause undue influence and pressure on judges, jurors and public prosecutors on certain occasions. Good professional skills, high ethical standards and strong self-restraint against premature comments on unresolved cases are necessary for judges and public prosecutors to meet this challenge. This points to the need for continuous education among judges and journalists, that is, enabling both professions to acquaint themselves with each other and to exchange practice and experiences.

In paragraph 74, the Opinion generally regulates the obligations of media liaison personnel, that is, a public information office, specifying in particular that public information officers or a group of judges trained to have contact with the media could help the media give accurate information on the work and decisions of the courts, and could also assist judges and prosecutors.

The aims of the analysis were to recognise and find basic assumptions for the establishment of a judicial media body and a set of rules and principles for the functioning of the body as a way of formalising cooperation between judges and journalists in the Republic of Macedonia.

4. POSITIVE PRACTICES OF JUDICIAL-MEDIA COMMISSIONS

Besides European legal standards, for practical examples of such formal cooperation between judges and journalists, experiences from similar commissions in US practice were taken as examples of good practice. Such commissions are the Judicial-Media Commission of the Supreme Court of Massachusetts and the Judicial-Media Council of the Supreme Court of Connecticut.

³¹⁷ Opinion no. 12, CCJE <https://www.coe.int/en/web/ccje>

5. THE JUDICIAL-MEDIA COMMISSION OF THE SUPREME COURT OF MASSACHUSETTS

This Commission was established to encourage positive professional relations and to foster better understanding between the judiciary and the media.

The Supreme Court's Judicial-Media Commission was established in 1995 to encourage good professional relations and better understanding between the judiciary and the media. The Commission meets every three months to discuss and, if possible, resolve problems that the media have in accessing court procedures and documents. It also helps judges and court personnel with media issues. Under the co-chairmanship of a Supreme Court judge, the Judicial-Media Commission covers:

- judges from the appellate and trial departments of the court, magistrates and registrars;
- editors and reporters from newspapers from all over the country, producers and directors of radio and television stations, lawyers and representatives of law firms;
- representatives of the Judges Conference of Massachusetts and of the Judicial Institute Flushner and the Public Relations Office of the Court.

The total composition of the Commission includes 33 members of whom 18 are judges, 8 are representatives of the media, 3 are representatives from the ranks of lawyers, and 6 are external members. Meetings usually begin with an address by a guest speaker, who alternately comes from the judiciary and the media. The topics range from issues related to the presence of cameras in courtrooms, through media reporting on trials of interest to the public, and access to court documents and proceedings.

In the past, the Judicial-Media Commission worked on the following: drafting, updating and disseminating guidelines on the right of the public to access court proceedings and transcripts to judges, court administrators and the media; sponsored regional conferences for judges, court administrators and media; "Legal Education for Journalists" programmes and similar activities to encourage better communication and understanding between the judiciary and the media. After the Commission adopts a decision on a particular issue that is the subject of mutual interest of judges and media representatives, it is referred to the hearing at a substantive session of the Supreme Court after which it comes into effect in the form of a legal opinion, and it will be obligatory and applicable in practice.

5.1. Judicial-Media Commission of the Supreme Court of Connecticut

The Court-Media Commission of the Supreme Court of Connecticut, similarly to that in Massachusetts, was founded to encourage a good professional attitude and better understanding between the judiciary and the media. The Commission meets twice a year in the form of a regular meeting and, if necessary, regarding problematic issues to discuss and, if possible, solve problems that the media have in accessing court proceedings and documents. It also helps judges and court personnel with media issues. Interestingly, the composition of this Commission is different from that of the Commission in Massachusetts. Namely, the Commission comprises 23 members of whom 10 are judges, 10 are journalists, and 3 are foreign experts. The adoption and implementation of the decisions of this Commission are done in the same way as in the previously mentioned one, that is, through the address of a guest speaker, who alternately comes from the judiciary and the media. The topics range from issues related to the presence of cameras in courtrooms, media reporting on trials of public interest, access to court documents and proceedings. However, this Commission, in relation to the identified problems being faced, implements research on key issues of interest to judges and journalists through pilot programmes and subgroups. Subgroups are of parity and are managed by a member of the Commission. The implementation period is two years, and the evaluation is carried out by the Commission. Upon completion of the pilot project, the conclusions, results and recommendations are submitted to the Massachusetts Supreme Court and are reviewed at a substantive session. In terms of promoting cooperation between judges and journalists, this Commission also provides special outreach programmes such as the Law School for Journalists, judicial-media language, schools for the promotion of professions through the study of specific terminologies, familiarisation with the judiciary programme for students, and similar programmes for the promotion of relations between the judiciary and the public.

6. NAME, NATURE AND COMPOSITION OF THE JUDICIAL MEDIA COUNCIL

Regarding the name of the new body in Macedonia, the members of the working group argued that in Macedonian terminology the word “Council” (Совет) is more appropriate than the word “Committee” (Комитет), given the consultative nature of the body and the consultative nature of its decisions. The full name of the body is “Judicial-Media Council” (Судско-медиумски совет). According to the nature of this institution, it would have an advisory role as suggested in the Analysis on the Legal Framework and Practice for Promoting and Formalising Judicial-Media Cooperation.

The points were in line with the provisions stipulated in paragraph 40 of Opinion 7³¹⁸ of the CCEJ which prescribes that it is necessary to establish an effective consultative mechanism where journalists and judges would discuss common problems and practical challenges. The final conclusions which were adopted stated that the Council would be established within the competence of the Macedonian Judges Association, and organised with a Rulebook of Procedures and a Rulebook on Decision Making which would stipulate a minimal set of very basic rules to preserve the consultative light character of the Council.

Regarding the composition of the Council, it consists of a total of 21 members (11 journalists and 10 judges) from all major media outlets in Macedonia. The profile of the outlets is: TV outlets, print outlets and electronic outlets reporting on the judiciary. The journalists, whose profile is to report on matters related to the judiciary, will be invited through their media outlet. All nominations are verified by the Steering Committee of the MJA. The judges are selected chief judges, presidents of courts, who can implement the decisions of the Council in their courts. All judges are selected from the member pool of the Macedonian Judges Association.

7. EDUCATIONAL ACTIVITIES, DECISION MAKING AND FINANCING

Training and educational activities of the Council will be organised to provide an exchange of good practice and experience among judges and journalists. Furthermore, this decision is in line with paragraph 42 of Opinion no. 7 of the CCJE which refers to the need to organise schools for journalists and judges for the purpose of the mutual acquaintance of the professions. The final conclusions on this matter relate to organising training for members of the Council by foreign and domestic experts, and, for the wider audience, organising educational activities in the form of a “Law School for Journalists” and a “Journalism School for Judges”.

Having in mind the consultative character of the Council, the Council’s decisions will be in the form of Conclusions, Initiatives and Opinions. The decisions will primarily be published on the website of the Judicial Media Council and in media outlets – members of the council – and will also be distributed to the relevant parties.

³¹⁸ Opinion no. 7, CCJE, available at: <https://www.coe.int/en/web/ccje>

8. CONCLUSION

The transparency of the judiciary has great importance and exerts influence on the development of public policy, as well as on the recognition and protection of the rights and control of other authorities. Building relationships between judges and journalists should be continuous and comprehensive and should balance access to information with protection of the presumption of innocence of the defendants, preventing sensationalism in media reporting on judicial cases, and protecting and promoting the interests of justice.

The main task of the newly established Judicial Media Council is to guarantee that the public be informed about the trials that are of interest to it and maintain a balance between privacy and public interest while respecting the presumption of innocence of those involved in the proceedings. It is also necessary to adopt a set of principles and rules, that is, a strategic plan to regulate the role of the media in court proceedings.